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No. 82-714

IN THE

Supreme Court of the United States

October Term, 1982

JOHN SEATH,
Petitioner,

v.

REGULATIONS AND PERMITS ADMINISTRATION,
Respondent.

ON A PETITION FOR A WRIT OF CERTIORARI FROM THE SUPREME COURT OF PUERTO RICO

PETITION FOR CERTIORARI

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The Questions Presented For Review.

I. Whether Petitioner's interests in an agency use permit is a "property interest" which could not lawfully be confiscated by Respondent without due process.

II. Whether Respondent violated due process by denying Petitioner a hearing mandated by statute and guaranteed under the United States Constitution's First, Fifth and Fourteenth Amendments.

III. Whether, after Respondent initiated an Injunction Petition, resolved against it and appealed, it could reach an administrative decision in conflict with the judicial order *sub judice* without a hearing to receive evidence or the grounds used for denial, without violating Petitioner's constitutional and statutory due process rights.

IV. Whether the decisions below violated (a) due process under the Fifth and Fourteenth Amendment of the United States Constitution and (b) meaningful access to the Court under the First Amendment by the Court granting validity and finality to an illegal and null administrative decision, which was not even subject of review in the Court procedures held simultaneously with the administrative proceedings.

V. Whether an important question of due process pertaining to Petitioner's right to fair hearing before being deprived of constitutionally protected property interest has been decided below in a manner which conflicts with applicable decisions of this Court.

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ON A PETITION FOR A WRIT OF CERTIORARI FROM THE SUPREME COURT OF PUERTO RICO.

PETITION FOR CERTIORARI.

The petitioner John Seath respectfully prays that a Writ of Certiorari issue to review the judgment of the Supreme Court of Puerto Rico entered in this proceeding.

*Alberto del Toro, *et als* intervened in the District Court proceedings and petitioned for review and Certiorari at the Superior Court and Supreme Court levels. Since due process constitutes our grounds for a Writ of Certiorari, being private interested parties, they have not been made formal parties of our Petition.

Judgment Order Below.

The Judgment Order of the Supreme Court of Puerto Rico is not officially reported; it is translated in the Appendix A.

Jurisdiction.

The Judgment Order of the Supreme Court of Puerto Rico was entered on June 30, 1982. A timely petition for rehearing was denied on July 22, 1982. Appendix B. Petition for Certiorari was filed within 90 days of that date although a clarification regarding the finality of the Judgment Order was filed and denied on September 8, 1982. Appendix C. This Court's jurisdiction is invoked under 28 U.S.C. Section 1258.

Constitutional Provisions Involved.

Amendment I. Constitution of the United States.

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof, or abridging freedom of speech, or of the press; or the rights of people peaceably to assemble, and to petition the Government for a redress of grievances.

Amendment V. Constitution of the United States.

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual services in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Amendment XIV. Constitution of the United States.

Section 1. Citizens of the United States.

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Statement of the Case.

The following pertinent facts were found by the District Court of Puerto Rico (Appendix D) after holding a hearing and a sight inspection under the special procedure providing for injunctive relief in Article 28 of Act No. 76 of June 24, 1975, as amended (23 LPRA Sec. 72).

1. On February 8, 1978, RPA issued to Mr. John Seath a use permit to operate a bar-restaurant in the first and second floor of the building at issue. Said building is owned by the Puerto Rico Industrial Development Company (PRIDCO) and leased to Petitioner, d/b/a Le Chatelet, Inc., on June 15, 1977.

2. The referred to building is located in district C-3 according to the Zoning Map of San Juan. In C-3 districts, commercial uses are permitted. The permit granted to Mr. John Seath was in conformity with district C-3.

3. Under said permit, Petitioner operated a restaurant, a bar, and a dancing pit already present in that premise, where live music was played. No complaints were filed nor is there evidence that while Petitioner operated his business with live music he would be violating RPA's regulations.

4. To benefit from the disco fad boom that took place around that time, Petitioner modified his bar and dancing pit into a discotheque, under the belief that it was in conformity with his use permit. The modifications introduced as arise from the findings in Appendixes D and E involved minimum structural changes for acoustic and privacy purposes; its main change consisting in the interior decoration of the premises, done in good taste and involving a large sum of money. Appendix D, paragraph 10, 12. In the exterior of the building ornamental awnings on the entrance doors and planters were placed. Appendix D, paragraph 11.

5. On June 30, 1978 John Seath applied to RPA for a modification of his use permit. On July 5, 1978 RPA objected the use permit pending the receipt of four endorsements. (No time limit was given to Petitioner for compliance).

6. Notwithstanding the fact that licensing administrative proceedings were pending before RPA, the latter filed an Injunction Petition under Act No. 76, *supra*, alleging that Petitioner was operating a business without obtaining the corresponding use permit; and in the benefit of the public interest requested immediate paralyzation of said use. Petitioner opposed the temporary restraining order since it would cause irreparable damages consisting in his economic ruin and the unemployment of at least fifteen persons. The TRO was denied by the Court and a hearing was scheduled for September 18, 1978. Besides the parties in the controversy, the District Court allowed the intervention of a group of residents of San Juan. A full hearing took place, and the Court conducted an on-site inspection of the facilities on September 19, 1978.

7. The District Court found that in remodeling, no structural changes were made to the building, but only a redecoration that made it more attractive; that the conditions imposed by the Fire Department had been met as well as the conditions of the Health Department. The endorsement of the Institute of

Culture was missing but said agency had no jurisdiction regarding the interior of the buildings as per their own communication and therefore its endorsement would involve only the exterior of the building. The on-site inspection also demonstrated that the musical sound of the electronic equipment was not heard outside nor was it a nuisance. The Court pointed out that across the controverted building the El Convento Hotel was operating.

8. As a matter of law, the Court found that there was a change in use because restaurants and bars fall under Paragraph 36, while commercial recreation falls within Paragraph 34, but both uses *are allowable under Zone C-3.* It concludes that in order to operate permanently as a discotheque, a use permit from RPA must be obtained, but that since Petitioner had substantially complied with the agency's requirements, RPA's Administrator could, under Article 10, dispense Petitioner from full compliance in cases where the literal application of the regulations' provisions would result in the prohibition or the unreasonable restriction, of the enjoyment of a property and said immunity would alleviate a clearly demonstrated damage, retaining the discretion to impose any conditions for the interest of the public welfare. He denied the permanent injunction and remanded the case to the agency for action in conformity to the Court's recommendations. In the meanwhile, the Petitioner should submit the missing endorsement.

Thus, end the findings of the Court used in this Statement of the Case. The rest finds support in the record.

Immediately after the Court's Resolution, Petitioner removed the awnings and flower beds which were the only exterior changes to the buildings.

Both RPA and the intervenors appealed the District Court's Resolution before the Superior Court of Puerto Rico, San Juan Section, on or about October 25 and 5, 1978, respectively. RPA's position can by synthesized as questioning the court's jurisdiction to entertain any fact-findings and questions of law

that were of agency primary jurisdiction, to abrogate functions of the Superior Court for the review of administrative decisions without exhaustion of the administrative proceeding, and to invade the Administration's powers. Since it was RPA who filed the action in Court, evidently *the basic contention was that the court only had authority to grant the Injunction.* The intervenors echoed RPA's allegations praying for the paralyzation of the business while the administrative proceeding took place.

While this appeal was *sub judice,* RPA without following the statutory requirements provided for in Article 7 and/or Article 25 of Act No. 76, *supra,* mandating a prior hearing before any adjudication, decision or resolution can be made, denied the use permit on December 15, 1978. Appendix F. RPA disregarded unilaterally the recommendations of the District Court still object of review by the Superior Court. It held no prior hearing to its determination. Furthermore, the basis for its determination was that according to Article 9 of its organic act the Administration could deny any application for use permit in any district or zone when required by "special characteristics that would make impracticable the application of the regulations' provisions on the subject because of the protection of the general welfare, and taking into consideration such factors as health, security, order, defense, economy, population, lack of facilities or communications, adequate use of the land or environmental conditions, aesthetic or exceptional beauty."

We fail to understand how RPA could have made applicable Article 9 to John Seath without receiving evidence to any of the extremes hereintofore mentioned at a public hearing as mandated by law. Said Article 9 (b) expressly requires a hearing prior to any determination. 23 LPRA Sec. 71(h).

On December 29, 1978 Petitioner requested a rehearing of the decision and also specifically requested a public hearing because his constitutional rights under both the United States and the Commonwealth of Puerto Rico Constitutions had been violated. Appendix G. No action was taken by RPA except that

on May 11, 1979, still pending the Review of the District Court resolution, RPA again notified John Seath that he was operating a discotheque without a permit but without giving him notice of the hearing requested. On June 6, 1979, John Seath filed a motion in RPA informing of the pending action at the Appellate Court and requesting an abeyance of any administrative action in conflict with the judicial action then *sub judice*. The Superior Court was also notified of said motion as of the same date. Appendixes H and I.

On May 28, 1980 the Superior Court of Puerto Rico dismissed the appeal on the basis that the District Court's resolution was not final and therefore not appealable. However, it further provided that should it be considered final, it would affirm the District Court's resolution, discussing in detail the authority under injunctive proceedings by the Courts. Appendix J.

On June 6, 1980 the intervenors petitioned for Certiorari from the Superior Court's judgment before the Supreme Court of Puerto Rico. RPA did not participate in the Certiorari proceedings. Obviously, it had decided, even prior to the Superior Court judgment, that it would disregard the District Court's judgment and make its administrative decision without giving John Seath the opportunity to be heard. That the denial of the license had been already predetermined is a fact that clearly arises from the record. John Seath did not appeal to the Appellate Board of the agency from the Administrator's decision. But, he actively participated in the court proceedings at great expense realizing the futility of pursuing the Administrative Forum. He did file an opposition to the Certiorari Writ on July 10, 1980. Thereinafter, the Supreme Court issued three resolutions dated November 4, 1981, December 22, 1981 and May 27, 1982, addressed at the District Court of Puerto Rico to update the factual situation in this case. Appendixes K, L, M. In compliance with said Resolutions the District Court held a chambers conference whereby certain stipulations of facts were made by the parties' attorneys. Appendix N.

On June 30, 1982 the Supreme Court of Puerto Rico not only annuled the Superior Court judgment and remanded the case to the District Court, but in addition held that the administrative decision which was not on review under the procedure established by Article 31 of Act No. 76, *supra*, was final and firm. A rehearing motion was filed by Petitioner on July 8, 1982 (Appendix N) but was denied on July 22, 1982.

Because the Supreme Court was giving a finality status to a decision of an administrative agency that had not been subject of review by the Superior Court, and since the Superior Court's judgment was drafted in the alternative method; on the one hand holding that the District Court's resolution was not appealable, but on the other hand stating that should it be appealable it would affirm it, we responsibly requested from the Supreme Court of Puerto Rico a clarification of the judgment upon being retained as Counsel of Petitioner before this Honorable Court as arises from Appendix O. Said motion was denied on September 9, 1982.

Reasons Relied on for the Allowance of the Writ.

1. Petitioner had a constitutionally protected property interest in the use permit to operate his livelihood business, which could not lawfully be confiscated by Respondent without due process under the Fifth Amendment.

Although the Fifth Amendment of the United States Constitution does not define "property", the judiciary has developed through the years a clear body of case law to guide us in the interpretation of the elusive concepts of property, due process, and other related protected rights. The due process concept of property has been broadened to encompass more than ownership of physical property. *Board of Regents of State Colleges v. Roth*, 408 U. S. 564 (1972). On the other hand, some courts have been reluctant to impose full due process considera-

tions in every case in which individuals or businesses are affected by agency action unless the right to be protected falls squarely within the meaning of "life, liberty and property" as encompassed in the due process clause. *Gart v. Cole*, 263 F. 2d 244 (2d Cir. 1959), cert. denied 359 U. S. 978. Thus, on the issue of whether there has been a deprivation of property under the Fifth Amendment, the Courts have looked into the statutory requirements for aid in constructing whether the entitlement alleged should be regarded more as "property" than as a "gratuity". In *Goldberg v. Kelly*, 397 U. S. 254 (1970), this Honorable Supreme Court held that welfare payments could not be terminated by a state agency without a prior hearing. Consequently, governmentally created property interests cannot be interfered with unless due process protections are adhered to. *Goss v. Lopez*, 419 U. S. 565 (1975). In this case, this Honorable Court held that as long as the property deprivation is not *"de minimis"*, due process requires a right to a hearing (at 576).

Petitioner Seath has a statutorily created right that squarely falls within the constitutional protection of property and its deprivation constitutes a "taking" without due process of law.

A license is a grant by a governmental authority of the right to engage in conduct which would be improper without such a grant. Although legislative procedures give rise to the standards under which a license may be granted, adjudicatory proceedings, requiring due process, are adopted to apply those standards. *Hornsby v. Allen*, 326 F. 2d 605 (5th Cir. 1964). The Administrative Procedures Act, 5 U.S.C. Sections 551 (8) and (9), defines "License" as "the whole or part of an agency *permit*, certificate, approval, registration, charter, membership, *statutory exemption* or other form of permission"; and "Licensing" as "agency process respecting the grant, *renewal, denial, revocation, suspension,* annulment, *withdrawal,* limitation, amendment, modification, *or conditioning* of a license." I found no case where this Honorable Court extends APA to the Commonwealth of Puerto Rico in view of our political status.

But the United States Constitution follows the flag, and the citizens of Puerto Rico are american citizens although Petitioner Seath himself is from New York, N. Y. Puerto Rico has no general administrative procedures act but each agency is governed by the legislative mandate. However, in viewing the procedure followed in the instance at bar, an analogy with 28 U.S.C. Section 2347 should be considered reasonably applicable.

Act No. 76 of June 24, 1975 creates the Regulations and Permits Administration. It does not define "permit" or "use", (Art 3). In its Article 7 it requires formal legislative hearings prior to the adoption and/or amendments of its Regulations. Regarding adjudicative functions, in its pertinent part, it provides:

> "The Administrator prior to any act, decision or resolution of its discretional adjudicative function in the cases provided through Regulation on Questions of Location, Concessions and Direct Authorization, Public Works, or cases of great social interest, among others, shall follow the prior hearing and notification procedure provided for in this Act. . . ."

Article 10 grants discretionary powers to the Administrator to exempt from regulations requirements when "the literal application of its provisions result in a prohibition or unreasonable restriction of the enjoyment of a property and it is proved to his satisfaction that said immunity will alleviate a clearly demonstrable damage, by imposing the conditions that case may merit for the benefit of the public interest. . . ." Article 16 requires a use permit from the Administration for the development and use of land and construction and use of buildings. The Administration is empowered to issue cease and desist orders by Article 25 but any aggrieved party has a statutory right to a hearing. 23 LPRA Sec 71 x. And, its Articles 26 and 28 provides for the special procedures in the District Court that were followed in the case at bar. The law creates a

Board of Appeals in its Article 31, providing for judicial review by the Superior Court of Puerto Rico. (Art. 31). The regulation applicable to the case at bar is Planning Regulation No. 4, Second Revision, 1978. It defines the allowed uses by district or zone. District C-3 is covered by Section 15.00 relative to commercial areas. Under said zone it provides for 42 different commercial uses, residence use (paragraph 43) and certain industrial uses [(paragraph 44(a) to (h)]. Some of the commercial uses allowed are car rentals, parkings, banks, stores, vocational schools, personal services businesses, gas stations, dancing, radio, and TV studios, photographic studios, hotels, gymnasiums, hospitals, guest houses, printing press, churches, laundromats, market places, *restaurant,* cafeterias, soda fountains, *bars or lounges* (Art. 36), beauty parlors, theaters, car lots, sale of heavy machinery, and *commercial recreation* (Art. 34).

Petitioner had a C-3 (36) permit initially granted by the RPA which allowed live entertainment, as it had been traditionally offered there by prior businesses. The change to discotheque was mistakenly but in good faith believed by Petitioner as falling within paragraph 36 of allowable uses. RPA alleged and the District Court upheld that the use permit applicable was that of commercial recreation (Art. 34). *Both uses are within the same C-3 District and need the same requirements.*

Contrary to the language of the Act requiring a prior hearing, the Regulation adopted by RPA illegally provides in Sections 53.00 and 54.00, regarding the discretional concessions and direct authorizations, that public hearings with due notice to the parties will be held if *the Administrator deems it necessary.* Other than the requisites for any C-3 establishment, no additional requirements or procedures are established by regulation for a change in use *within accepted uses* under the same C-3 zone. From the Administrator's Report (Exhibit F), said fact of law is admitted in the third paragraph where he states that a usage may be allowed in a district with said classification (C-3) *if all the requisites exacted for the particular district are met.* Petitioner initially met all requisites, under District C-3 and his license was issued.

Therefore, Petitioner had an initial C-3 Zone permit after complying with all the requisites for said zone. The use allowed was restaurant-bar. The use he seeks is for commercial recreation. There are no additional requisites for said usage. He applied for said permit even though originally he thought there was no great difference in a shift from live to taped music. The only reason why Petitioner has been operating without a use permit is because RPA, without just cause, without affording him the opportunity to be heard, has arbitrarily refused to grant a permit, which is in conformity with the District's requirements. RPA refuses to move the administrative machine. Furthermore, it sought the District Court's powers to enjoin Petitioner from operating his business until he had a use permit that blatantly RPA was not willing to issue.

Adjudicatory procedures must be accorded due process especially when they involve the right of an application to engage in a business, trade or occupation. *Schware v. Bd. of Bar Examiners,* 353 U. S. 232 (1957). In *Hogge v. Hedrick,* 391 F. Supp. 91 (E.D. Va. 1974), the Court found that the protected interest, granting a prospective licensee the right to a hearing was the "liberty" interest of due process. In *Missurelli v. City of Racine,* 346 F. Supp. 43 (E. D. Wis. 1972), vacated on other grounds *sub nom.*, the Court described specific due process requirements for licensing, specially when third parties are involved, like in the case at bar.

When suspension, modification or revocation of a license by the issuing agency is pursued, then the general rule is that a prior hearing *must* take place prior to an actual change in the status of the license, since its continued possession may become essential in the pursuit of a livelihood. *Bell v. Burson,* 402 U. S. 535 (1971). Even in the broad discretionary area of liquor sales, proper hearings have been required. *California v. La Rue,* 409 U. S. 109 (1972); *City of Kenosha, Wis. v. Bruno,* 412 U. S. 507 (1973); 5 Mezines, Stein and Gruff, *Administrative Law,* pp. 41-55.

Action detrimental to the licensee may be exercised without a hearing only when an immediate actual danger to the public has been demonstrated. *Air East, Inc. v. Nat'l Transp. Safety Bd.*, 512 F. 2d 1227 (3d Cir.), cert. denied 423 U. S. 863 (1975); and *Nader v. FAA*, 440 F. 2d 292 (D.C. Cir. 1971). This is not our case, as the record shows, although the Administrator's Report implies a threat, not supported by the record. See also *CAB v. Delta Air Lines, Inc.*, 367 U. S. 316 (1961), holding that any ambiguity must be resolved in favor of the licensee.

The only other exception to the prior hearing and notice requirement is when the licensee intentionally disregards lawful requirements. The record shows that this is not Petitioner's case either. Originally he mistakenly believed that his permit allowed him to use his facilities with taped music. Even though the District Court reasoned there had been a change in use, and that paragraph 34 rather than 36 was applicable—which reasoning we are not controverting—this Honorable Court should weigh that the distinction is so fine that any reasonable man may have unintentionally believed to be in conformity, especially when discotheque and/or night clubs are not listed as such in C-3 zones and on the premises there had always been a night club before, although with live entertainment. This Honorable Court should take notice that Petitioner filed an application before the agency *before* action was brought against him. Moreover, he has diligently defended his right, proving in the *only hearing held*, that RPA could issue him his license, nothing to the contrary withstanding. His act was not "willful" nor done in disregard of lawful requirements. *U.S. v. Ill. Central Ry.*, 303 U. S. 239 (1938). On the contrary, he has tried to comply but has not been allowed to by RPA.

In point to our case is a recent decision by the Court of Appeals of the Seventh Circuit holding that leasehold interests are property interests protected by the Fifth Amendment. *Devines v. Maier*, 50 LW 2351 (1981). It points out that a Fifth Amend-

ment "taking" can occur through the exercise of the police power to regulate property rights. In that case, through the enforcement of housing codes, the owner of the property was left with significant residual property rights while the tenants, whose rights to occupy the premises were extinguished, had nothing left.

So is Petitioner's protected leasehold rights affected. While RPA's capricious denials leaves the owner of the building—another government agency—with an improved property easily leaseable again, Petitioner will have nothing left should the invalid denial of RPA be deemed "final," "legal" and "enforceable" by the District Court upon remand. Such action is confiscatory in nature and violates the very essence of a due process concept, be it under the First, the Fifth or Fourteenth Amendment.

This Honorable Court may have before it many more crucial issues. But, no constitutional interest is small enough, if the cornerstone of democracy—due process—is either totally demolished or gradually eroded. We pray the Writ of Certiorari be granted.

2. Respondent violated Petitioner's constitutional and statutory rights by abusing its discretionary powers and denying him a license that complied with the requisites of District C-3, without holding a hearing prior to, or at any stage, of the denial licensing procedure followed administratively in contempt of the District Court's order.

There is no doubt that United States constitutional due process protections are applicable to federal administrative agencies. *Wong Yang Sung v. McGrath,* 339 U. S. 33 (1950). In that respect this latter case resolved that "The constitutional requirement of procedural due process of law derives from the same source as Congress power to legislate and where applicable,

permeates every valid enactment of that body." (at 49). In *Hornsby, supra,* and citing *SEC v. Chenery Corp.,* 318 U. S. 80 (1943), the Court said:

> "Due process in administrative proceedings of a judicial nature has been said generally to be in conformity to fair practice of Anglo-Saxon jurisprudence . . . which is usually equated with adequate notice and a fair hearing. . . . Although strict adherence to the common-law rules of evidence at the hearing is not required . . . the parties must generally be allowed an opportunity to know the claims of the opposing party . . . to present evidence to support their contentions . . . and to cross-examine witnesses for the other side. . . . Thus it is not proper to admit *exparte* evidence, given by witnesses not under oath and not subject to cross-examination by the opposing party. . . . *A fortiori,* the deciding authority may not base its decision on evidence which has not been specifically brought before it . . . the findings must conform to the evidence adduced at the hearing . . . Furthermore, the Supreme Court has said that an administrative order 'cannot be upheld merely because findings may have been made and considerations disclosed which would justify its order * * * . There must be such a responsible finding'."

The Constitution of Puerto Rico is framed under, and cannot be in conflict with, the United States Constitution. It follows that the administrative due process required from a State of the federal government is applicable to the "Associated State" (Commonwealth) of Puerto Rico. Our own Supreme Court has so recognized citing United States Supreme Court Cases on the subject. *Ortiz Cruz v. Junta Hipica de P. R.,* 101 DPR 791 (1973), citing *Morrisey v. Brewer,* 408 U. S. 471 (1972) and *Goldberg, supra; Marrero Bermudez v. Com. Ind.,* 78 JTS 79; *Pagan Hernadez v. U.P.R., et als,* 78 JTS 77; *Ledesma, Admor. v. Trib. de Distrito,* 73 DPR 396 (1952); *Atl. Southern Ins.*

Co. v. Castro, 86 DPR 79 (1962); *Com. de Seguros v. Bradley,* 98 DPR 21 (1969); *Pierson v. Feijoo,* 600 DPR 838 (1978); *Mundo v. Trib. Sup.,* 101 DPR 302 (1972); *Infante v. Leith,* 85 DPR 26 (1962).

Specifically, in *Paine v. Srio de Hacienda,* 85 DPR 817 (1962), our Supreme Court declared that the rights, privileges and immunities of the citizens of the United States will be upheld in Puerto Rico as if it were a State. Persons born in Puerto Rico have dual citizenship—American and Puerto Rican. It is needless to cite before this Honorable Court, the ample jurisprudence affording constitutional guarantees that have been extended to the citizens of Puerto Rico, especially in the criminal field. *Miranda v. Arizona,* 384 U. S. 436 (1966); *Escobedo v. Ill.,* 378 U. S. 478 (1974); *Rivera Escute v. Jefe Penitenciaria,* 92 DPR 765 (1965).

The question then is, what due process did Petitioner have a right to, under the United States Constitution and Act No. 76, *supra?*

We contend there were at least three valid statutory due processes contemplated before administrative action could have been exercised.

Following the primary jurisdiction doctrine as first stated in *Texas and Pacific Ry. Co. v. Abilene Cotton Oil Co.,* 204 U. S. 426 (1927), the Court should defer action until they have the benefit of an agency's view on issues within the agency's competence. Petitioner first filed his application before the agency. He did not initiate an action in Court. The logical and due process should have been for the agency to notify its objections, as it did on July 5, 1978 and schedule a hearing as required by its organic act. After allowing Petitioner a fair hearing, the opportunity to confront and cross examine witnesses and/or the allegedly aggrieved neighbors, the licensee should have been af-

forded the opportunity to comply with all legal requirements. 5 Mezines, *Ob. Cit.* pp. 41-55. Should the evidence demonstrate that either:

1) Petitioner refused to comply with regulatory requirements, or

2) Petitioner's unlawfulness was of such nature that could not be corrected, and would continuously violate RPA's regulations, or

3) The public health, interest or safety were in immediate danger, or

4) Any valid findings of fact and of law, then RPA could have denied the license providing in writing as required by statute, the grounds of fact and law for denial, which had to be notified to Petitioner. This procedure had to be followed, as per Article 9, even in cases where a use permit due to "particular characteristics" affected the health, security, defense, etc., as the Administrator held in his legal Report. Appendix F. After weighing the evidence the Administrator could have dispensed Petitioner or not from strict compliance, as recommended by the District Court, under his discretionary authority, Art. 10 of Act 76, *supra.*

This procedure would have afforded Petitioner his day in Court, and from said decision he could have appealed to the Board of Appeals of Construction and Subdivisions. After requesting a rehearing of whatever decision the Board issued; Petitioner had a right to a review recourse before the Superior Court of Puerto Rico. This Court, after reviewing the record as a whole, would review only questions of law. Thus, would have been met the Exhaustion of Administrative Remedies within a constitutional and statutory framework of due process. This procedure was not followed in our case.

The second contemplated procedure by the enabling act, was that the Administrator could issue a cease and desist order so that preventive and control measures be taken to further its Regulations objectives. Any aggrieved person has the statutory right (Art. 25) to a hearing to show cause why said order should be revoked, modified or sustained. The Administrator's resolution once again would be reviewable by the Superior Court only, provided that pending its determination by the Court, the order remained effective. This was not followed in the case at bar.

The third contemplated procedure, which was the one RPA chose to follow, was to initiate in a First Instance Court, a special Procedure in the nature of injunctive relief, or Mandamus, etc., to prohibit any use *in violation of the Act* (Art. 28). Now this procedure was equated to an Injunction Procedure by the Supreme Court of Puerto Rico in *Torres v. Rodriguez*, 101 DPR 177, 184 (1973), although with reference to Article 12 of the Planning Law of 1946, 23 LPRA 42, now superseded by Act No. 76. Article 28's language, however, is practically identical to Article 12, for which reason the Superior Court understood, and we hereby allege, that construction of this article should be guided by the jurisprudence pertinent to injunctions. Appendix J. A reading of said article makes unarguable the Court's jurisdiction and responsibility to hold a hearing, conduct a sight investigation, and either *grant or deny* the petition. To that effect, subparagraph (f) provides: "The resolution *may* order the permanent paralyzation of the acts alleged in the petition *or* leave without effect the provisional injunctive order." This Resolution, as per statute, is appealable by a higher court. And, it further provides that *any person* who violates the terms of a temporary or permanent order shall *be in contempt* of the Court and subject to sanctions.

RPA filed a petition under this procedure. The Court held a hearing and a sight inspection. A Resolution with detailed findings of fact and conclusions of law was issued. It denied the permanent injunction, remanded the case to the agency for ad-

ministrative determination in accordance with its recommendations. Obviously, said determination had to be made according to the due process heretofore discussed.

RPA *did not accept* the Court's Resolution and appealed it as it had a right to do. In its appeal, it and the interveners, challenged the Court's jurisdiction on grounds of primary jurisdiction inapplicable in the case at bar. As I understand the doctrine, the issue arises when a statute allows both the administrative forum *and* the judicial forum to an aggrieved party. In said instance, generally the aggrieved party must go to the agency first. This is not so, when like in *Abilene, supra,* the enabling act does not abrogate a common law right to sue, or where as in *Nader, supra,* there is no conflict between common law remedies and the statutory regulatory scheme, or plaintiff is unable to use the administrative process like in *Rosado v. Wyman,* 397 U. S. 397 (1970). Had Petitioner initiated proceedings before the Court to force the agency to conduct administrative proceedings, a primary jurisdiction issue would have arisen, even when in such case the Court would have been free to assume its determination of the case. *Atchinson Topeka & S.F. Ry. Co. v. Aircoach Transp. Ass'n,* 253 F. 2d 877 (D.C. Cir. 1958).

The administrative agency's adjudicatory role in our system was a way of devising a fair, practical and flexible, less costly and complicated than ordinary, litigation. *Perez Rios v. Hull Dobbs,* 78 JTS 90, p. 637. Mezines, *Ob. Cit.* pp. 1-11, *et seq.* This role was abandoned and deformed by RPA.

By appealing the District Court's Resolution, RPA forced Petitioner into costly litigation to continue to defend his rights. Similar to *Bankers Life and Cas. Co. v. Callaway,* 530 F. 2d 625 (5th Cir. 1976), cert. denied *sub nom.* As expressed in *Bankers Life & Cas. Co. v. Hoffman,* 429 U. S. 1073 (1977), on one hand, the party unable to obtain a permit, which would allow financial exploitation of the property, would suffer hardship if judicial review were withheld; on the other hand, should the party comply with the rule that he may not begin operations without the permit, he would end up being unable to use his business to his economic advantage. In our case, four years have

elapsed, meaning that compliance would have left without jobs a number of employees and in total economic ruin the Petitioner. The question at this point is, compliance with what?

The District Court's Resolution was favourable to Petitioner. Once appealed, its review was *sub judice*. Meanwhile the Order to RPA to continue administrative proceedings, suggesting that the injunctive relief was premature, was holding. RPA, in open contempt of the Court's order, refused to hold hearings; and contrary to the Court's findings on evidence submitted to it, took a conflicting position and denied the permit without a hearing.

Was Petitioner in a legal obligation to defend his constitutional rights simultaneously in both forums? The same facts. The same questions of law. Multiplicity of suits. We will cover the exhaustion doctrine in our next argument. But, we would like to stress now that we have been unable to find a case exactly in point, possibly because no other federal agency has acted so arbitrarily, capriciously* and with such absolute disregard of its own enabling act and the judicial resolutions.

We vigorously allege that the dubious proceeding followed by RPA, distracting Petitioner's attention by a timely and legal appeal, which should have first been disposed of if RPA was going to challenge the District Court's Resolution, and at the same time denying without a hearing the use permit in open contempt of the judiciary and with no substantial evidence on its record to justify said "emergency" action, is one of the clearest examples we have ever been exposed to of violation of the First, Fifth and Fourteenth Amendments.

*At this point, we would like to bring to the Court's judicial notice, that Petitioner Seath was the only witness for the Prosecution in Criminal Case No. G-80-482 against Representative Antonio Sagardia, who tried to raise $50,000.00 for his party political campaign in exchange for the controverted use permit. A charge was filed on October 26, 1979 and resulted in his conviction for Article 213 of the Penal Code of Puerto Rico (influence peddling) on June 12, 1980 and sentenced on July 3, 1980 by Judge Felipe Perez Cruz. Mr. Sagardia was President of the Industry and Commerce Committee in the House of Representatives, a member of the New Progressive Party, which is still the present administration.

Our argument herein disposes of the II and III Questions Presented for Review. Except that to emphasize why the Writ of Certiorari should issue, the Court should really see through RPA's real contention. We believe RPA reads in its statute (Art. 28) the same type of reasoning that the Equal Employment Opportunity Commission had in *EEOC v. Anchor Hocking Corp.* (6th Cir. 1981), 50 LW 2394. In said case, Section 706 (f)(2) of the 1964 Civil Rights Act allows the Commission to bring an action for appropriate temporary relief pending final disposition of a charge. EEOC alleged that the statute placed upon the Commission the primary responsibility of determining the necessity of preliminary relief. The Court held that the statute does not state that an injunction must be granted whenever the Commission determines that prompt judicial action is necessary. The decision whether relief is appropriate is left to the Courts. Striking down the dictum of the 9th Circuit Court of Appeals in *EEOC v. Pacific Press Publishing Co.*,535 F. 2d 1183 (1976), Court points out that the problem with EEOC's reasoning was that it would amount to giving EEOC itself the authority to determine whether injunctive relief should be granted. This rationale falls squarely with the case at bar. The judgment of the Supreme Court of Puerto Rico, with relation to the powers of a Court for injunctive relief is contrary to applicable decisions regarding the nature and scope of the courts in injunction proceedings. It dangerously places, without any evidence of legislative intent or statutory language, the initial determination of whether injunctive relief is appropriate on RPA, even when it had before it ample evidence that RPA had exercised said initial determination without holding a hearing as mandated by statute and as guaranteed by the United States Constitution.

3(a). Petitioner was denied procedural due process under the Fifth Amendment because no meaningful access to the Court was afforded regarding a judgment on the finality of an administrative decision that was null and illegal on its face.

RPA's decision denying the use permit was never object of review by the Superior Court as provided by statute. The issue before the Superior Court was the appealability of the District

Court's Resolution. Because the District Court retained jurisdiction while remanding the case to the agency for appropriate proceedings, the Superior Court held that only final resolutions were subject to an appeal. However, since the Trial Court's discretion was being challenged also, the Superior Court held that were it appealable, he would confirm it. Defending the court's injunctive powers, the Superior Court judge stated: "We are unable to agree with the position adopted by the appellants that the District Court could only determine whether or not a specific use for which *no specific permit existed* was being carried on, and that if it so determined, it issue the restraining order. This behavior would not only be incompatible with a statute that expressly authorized defendant to 'oppose any legal defense', but would be incompatible with the general doctrine of injunction, which has always recognized the court's discretion and its duty to weigh the interests in conflict and which has never conceived the role of the court as one of a robot with no discretion or capacity to judge. . . ." (Emphasis supplied)

Those two questions were the only ones object of the Writ of Certiorari before the Supreme Court of Puerto Rico. If affirmed, it meant that the District Court's resolution was not appealable. It would also mean, that the alternative dictum affirming jurisdiction below would be affirmed. In such case then, RPA had to obey the District Court's Order and pursue its administrative proceeding according to statute. If annulled, the Supreme Court decision then meant that the District Court's Resolution was appealable, as it is clearly stated in the statute. The Supreme Court could have either affirmed, or denied the District Court's discretion as asserted by RPA. If affirmed, again RPA had to obey the District Court's Order. If not, the District Court had no choice but to issue the temporary or permanent injunction sought by RPA. This by itself is in conflict with applicable decisions of this Honorable Court, as will be discussed further on, as it has the effect of stripping the courts of the interpretative functions of irreparable damage that underlies injunctive relief, and of the balancing test regarding due process, unduly placing said authority by judicial fiat on an administrative agency. *Ortiz Cabrera v. Court*, 101 DPR 612 (1973), *Ports Authority v. Court*, 103 DPR 903 (1975). *Cafeteria Workers Union v. McElroy*, 367 U. S. 886 (1961).

But this was not all that the Supreme Court judgment did. It held that the administrative decision was *final and firm*. Thus, when the District Court opens re-hearings for "final adjudication of the controversy according to the present status"—which is that the business continues to operate without the use permit that RPA has refused to issue—the District Court can only *grant* the injunction. The business will be closed over proof that it substantially complied with all the requirements, that no different requirements are exacted for a paragraph 34 C-3 Zone operation than a paragraph 36 C-3 Zone operation. And . . . that the only missing endorsement . . . that of the Institute of Culture regarding the exterior minor changes is not even necessary as the awnings and planters were immediately removed by Petitioner in his efforts to comply to the agency's requirements.

The weakness of our case lies in the exhaustion of remedies doctrine. Did Petitioner incur in laches? He requested a hearing. He petitioned for rehearing. He received no answer. He had recourse to the Board of Appeals but did not do so. Did he have to exhaust the administrative procedure while litigating in Court the same issues? He reminded RPA that the case was *sub judice* and that its action—until revoked—was in conflict with the Court's Order, and in contempt of such Order. Could said administrative decision be considered final when it violates essential constitutional rights? We hold the Supreme Court of Puerto Rico erred in so finding.

The exhaustion doctrine is not a hard and fast rule. A primary purpose for the doctrine is to prevent the Courts from interfering with administrative proceedings, which is not our fact situation, since RPA, not the aggrieved party, initiated the action. Exceptions to the doctrine for judicial review have been carved out requiring that the government's interest in application of the doctrine, outweighs the burden it places on Petitioner. *McKart v. U. S.*, 395 U. S. 185 (1969). Said exceptions to the exhaustion doctrine have arisen from a number of cases, and some of them were listed in *Feaster v. U. S.*, 396 U. S. 962 (1969) as: (1) international repercussions as a result of agency proceedings; (2) *violation of constitutional rights by the agency;* (3) *agency action in excess of statutory authority.* (Emphasis supplied). Also, when the pursuit of an administrative remedy would be

futile or when the decision makers were hopelessly deadlocked, review may be granted without exhaustion. *Order of Railway Conductors of America v. Swan*, 329 U. S. 520 (1947). Irreparable injury will also serve as an exception, which was a factor considered by the District Court's Order.

For the end of this Honorable Court's jurisdiction, suffice it to allege that agency action in excess of statutory authority has violated Petitioner's constitutional rights. In *Goldberg, supra*, this Honorable Court developed a balancing test in which the precise nature of the government function involved is weighed against the parties that have been affected by government action and to the extent that the private interest outweighs the government function, greater procedural due process rights will be afforded to the affected parties. What then is the government interest so great as to summarily strip Petitioner of his property without just compensation? What is the public interest protected—safety? health? population? defense? order?—which of the Article 9 special circumstances listed in Appendix F finds support in the record to outweigh the irreparable damage to Petitioner, to deny him his property rights and the loss of jobs to an economy that has a 23% unemployment rate? I suggest there is no valid reason to support RPA's denial, without due process.

It is obvious that a group of residents intervened actively in the Court procedure—*without offering any evidence to support their standing and interests.* That they are an "interested party" flows clearly from their pursuing an appeal, even when RPA abandoned it at the Supreme Court level.

Now, the record shows that there are residents in Old San Juan within a commercial district. It is also clear that the commercial uses (42 in total) and industrial uses (8) outweigh the residential use (1) of that District. The range of permissible uses was before discussed. A hotel, with its restaurant, bar, lounge and casino is adjacent to the premise of Petitioner. Why did they pick on Petitioner? His business decorations are of good taste. The sound of his discotheque cannot be heard outside. He meets Fire and Health Department requirements. The sight inspection conducted by an impartial judge throws no impediments to his license grant or modification.

I suggest the neighbors, who chose to reside in Old San Juan, knew that said District was a highly commercial one. In fact, it is the tourist attraction *par excellence*. Commercial recreation that would enhance the area's attraction for cruise ships and tourists should be promoted not suffocated. The area cannot, nor should it be turned into a residential area, nor is that RPA's object. So, again, what public interest is present to deprive Petitioner of his property rights without due process?

Which violation of the Regulations is so serious as to move RPA to seek injunctive relief on behalf of the people of Puerto Rico? Petitioner did not *construct nor extend the building*. Therefore, no prior construction permit was necessary. The Institute of Culture does not have jurisdiction of interior changes; only in structural exterior changes at historic buildings. This is not even a "historic" building since it was built in this century. Appendix D. What did Petitioner do that was so terrible? RPA did not advance one good reason as grounds to support the special procedure chosen. The four objections reported on July 5, 1978 to Petitioner were properly disposed of at the hearing. But . . . said dispositions are now being vacated by the Court below by giving finality to a null decision, absent a record for review. RPA prevented the making of such record. The fact that there was no fair hearing at the administrative level was not considered, and is not set forth, in any decision below.

Under the *Matthews v. Eldridge* balancing test, 424 U. S. 319 (1976), the private interest here affected is substantial and the potential deprivation great. Although the government interest in developing an integral planning of the construction and use of property is valid, it was limited, both in its rule-making and adjudicative functions by our legislative assembly, to guarantee due process—violated in the case at bar. Nor did the neighbors prove their standing for injunctive relief. The United States Court of Appeals for the Seventh Circuit denied injunctive relief to neighbors of a subsidized housing project because they did not show an injury likely to be redressed by a favourable decision. *South East Lake View Neighbors v. HUD*, 51 LW 2127 (1982). Petitioner has operated his business properly during four years with no injury to them. If he is evicted, the building shall be leased for the traditional type of commercial

operation undertaken during the last 15 years. But, above all, the "secret evidence" provided by these neighbors, "the silent interests" propounded by them, should not prevail over Petitioner's acquired property rights, when he could never confront nor cross-examine them since none of them took the stand.

In view of the foregoing, we contend that RPA's denial is null and void, its action violated constitutional and statutory due process for which reason exhaustion of remedies is not needed to obtain judicial review. RPA's lack of record avoids the possibility of factual consideration. Review had been anyhow limited to questions of law by the Superior Court. This court never reviewed the agency's determination. Thus, the conclusion of law by the Court below that said determination is firm is contrary to federal case law as it did not account for the lack of due process, and denies Petitioner an effective access to his day in court. Certiorari should be granted.

3(b). By denying meaningful access to the Court to Petitioner, the Court below has violated Petitioner's due process under the Fifth and Fourteenth Amendments of the United States Constitution.

We contend that although Petitioner's right to a hearing is a substantial constitutional question, up until the Court's judgment below, his right to invoke constitutional protection was not ripe[1] because there are no restrictions on when the agency must conduct a hearing. The crux of the matter is that some hearing takes place before the agency's decision *becomes effective. Opp. Cotton Mills v. Administrator,* 312 U. S. 126 (1941). Even in emergency situations meriting summary action, a hearing is afforded at a later date. *Ewing v. Mytinger & Casselberry, Inc.,* 339 U. S. 594 (1950).

Following the *Abbot* guidelines, RPA's determination would meet the test for finality and reviewability. Facts and defenses as brought before this Honorable Court may have been available to Petitioner on review before the Superior Court of Puerto Rico. However, the Court below determined the administrative denial was *firm*. Consequently, it is not reviewable any longer.

[1]Mezines, Ob. Cit. Sections 48.02 and 48.03 on Ripeness and Finality, pp. 4-29.

Furthermore, it remands the case to the District Court for further proceedings. Only the Superior Court can review administrative actions per statute.

Petitioner's only open government redress under the First Amendment to safeguard his Fifth and Fourteenth Amendments rights is recourse to this Honorable Court. Certiorari should be issued to consider questions of constitutional law. Under the *Abbot* case test, the hardship to the Petitioner as a result of withholding review is apparent.

Furthermore, to await the District Court's "final" determination, when we anticipate Petitioner will be enjoined from the use and enjoyment of his property, we hold is unneeded, as it falls under the "Collateral Order" exception, which allows an Appellate Court to review non-final determinations of a lower court. *Cohen v. Beneficial Industrial Loan,* 337 U. S. 541 (1949). We mention this issue because to the undersigned attorney, it is clear that the Supreme Court of Puerto Rico's judgment is final and subject to a Certiorari Writ. At the same time, further proceedings will ensue as a result at the District Court level, which should be stayed pending resolution of this petition, if its grant is to become meaningful. To that end, we shall file as soon as possible our petition for stay.

4. The Court below has decided a federal question in a way in conflict with applicable decisions of this Court.

The finding considering as firm the administrative decision of the Regulations and Permits Administration was not a finding of fact at all. It was an unwarranted conclusion of law supported by nothing in the Record.

As before argued, procedural due process imposes constraints on governmental decisions which deprive individuals of property interests within the meaning of the due process clauses of the Fifth and Fourteenth Amendment.

Back in 1958, in interpreting the Planning Board Act, our own Supreme Court held in *Lopez v. Planning Board,* 80 DPR 646, that:

> "Upon considering and resolving an exception application for the construction and operation of a tourism hotel in a zone or district R-1, filed directly on first instance before it, the Planning Board has to celebrate an administrative hearing of quasi-judicial character abiding by the requisites of due process of law, has to make findings of facts supported by the evidence submitted at the hearing, and has to set forth the reasons or conclusions of fact and of law as grounds for its decision."

The present Planning Board Act contains almost identical language with reference to the exceptions and authorization functions as expounded by the Honorable Superior Court Judge. Thus, *sub silentio,* through this anomalous judgment, in fact the court below is revoking the *Lopez* ratio decidendi, a leading case in our jurisdiction. It is rendering a decision that conflicts with its own reasoning in *JRT v. Missy Mfg. Corp.*, 99 DPR 805 (1971), that just and reasonable guidelines formulated to further justice and minimize the rigors of both judicial and administrative proceedings affecting the fundamental rights of a party's day in court are ineludibly applicable to both court and administrative adjudications.

An important federal question is at issue.

Long ago this Honorable Court ruled that people who are brought into contest with the Government in a quasi-judicial proceeding aimed at control or criticism of their activities are entitled to be fairly advised *beforehand* of what the Government proposes as the issue, and to be heard on the proposal before a final ruling is issued. *Morgan v. U. S.*, 304 U. S. 1, 18-19, 5889 S. Ct. 773, 82 L. Ed. 1129 (1938). Since, this Court has consistently held that some form of adequate hearing is required before any individual is deprived of a property interest. *Matthews v. Eldridge, supra; Wolff v. McDonnell,* 418 U. S. 539, 94 S. Ct. 2963, 41 L. Ed. 2d 935 (1974); *Armstrong v. Manzo,* 380 U. S. 545, 85 S. Ct. 1187, 14 L. Ed. 2d 62 (1965).

The right to be heard before being condemned to suffer grievous loss of any kind is a principle basic to our society. *Joint Anti-Fascist Committee v. McGrath,* 341 U. S. 123, 71 S. Ct. 624, 95 L. Ed. 817.

In the case at bar, the double-standard procedures followed in court vis-a-vis a contemptuous administrative resolution, has resulted in the deprivation of Petitioner's cause of action, of fair redress, and in due time of his property rights.

This year, the due process clause of the Fourteenth Amendment regarding the deprivation of a property interest was object of an excellent, thorough analysis and opinion delivered by Justice Blackman in *Laverne L. Logan v. Zimmerman Brush Co., et al.,* 50 LW 4247 (1981). Therein, the Court held that a cause of action is a species of property protected by the Fourteenth Amendment's Due Process Clause, reaffirming the 1950 decision of Justice Jackson in *Mullane v. Central Hanover Bank and Trust Co.,* 339 U. S. 306 (1950). Pointing out that the question is hardly a novel one, the Court reaffirms a party's right, either as a plaintiff or a defendant, to a redress of grievances and to be heard, thus reaffirming *Boddie v. Connecticut,* 401 U. S. 371 (1971), *Wolff, supra,* and other prior Supreme Court decisions cited in the opinion, with which the judgment below at issue openly conflicts. It also covers the nature of a property interest. Citing from *Memphis Light, Gas, and Water Division v. Craft,* 436 U. S. 1, 11-12 (1978), it reasons that the hallmark of property is an individual entitlement grounded in state law, which cannot be removed except "for cause". Thereafter, Justice Blackman reaffirms the *Goldberg* decision on welfare benefits and others dealing with a horse trainer's license, utility service, disability benefits, high school education, government employment and a driver's license (at 4250), some of which we have used as legal basis for this petition. Relying on a number of leading Supreme Court decisions, too numerous to unnecessarily cover herein, the Supreme Court plainly leaves no doubt that the due process clause grants the aggrieved party the opportunity to present his case and have its merits fairly judged prior to a

decision that destroys his property interest, and also that absent the necessity of quick action by the State a postdeprivation hearing is constitutionally inadequate, stating that this reasoning is in line with *Parratt v. Taylor*, 451 U. S. 527 (1981), although the holding in the latter differed. Concluding, the Court restates that what the Fourteenth Amendment does require is "an opportunity . . . granted at a *meaningful time* and in a meaningful manner.".

The judgment of the Supreme Court of Puerto Rico in the case at bar conflicts with the applicable decisions of this Court and with the United States Constitution, for which reason the Writ should issue.

Conclusion.

Puerto Rico has been considered by this Honorable Court sovereign over matters not ruled by the Constitution. *Calero Toledo v. Pearson Yatch Leasing Co.*, 416 U. S. 663. We realize the high deference that its Supreme Court opinions are given by this Honorable Court. The review we request is of a judgment order. At stake are constitutional rights and/or privileges. Violations of this nature may be brought to your consideration under 28 U.S.C. Section 1258. The reasons relied on for the allowance of the Writ of Certiorari are fundamental to our democratic system. For these reasons, a Writ of Certiorari should issue to review the Judgment Order of the Supreme Court of Puerto Rico.

Respectfully submitted,

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